

United States District Court

For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

ROY D. NEWPORT, *et al.*,

No. C 10-04511 WHA

Plaintiffs/Counter-Defendants,

v.

BURGER KING CORPORATION,

Defendant/Counter-Claimant,

v.

ANTELOPE VALLEY RESTAURANTS, INC, *et al.*

Counter-Defendants.

**ORDER ON DEFENDANT
BURGER KING'S REQUEST AT
DOCKET NUMBER 373 FOR
LEAVE TO FILE A MOTION TO
STRIKE EVIDENTIARY
OBJECTIONS**

Defendant Burger King Corporation has submitted a “request for leave to file a motion to strike evidentiary objections [Dkt. Nos. 350-1 and 361], or, in the alternative, request that the court overrule the evidentiary objections or grant [BKC] leave to respond to the same” (Dkt. No. 373). Plaintiffs/counter-defendants oppose (Dkt. No. 386). Strategic Restaurants Acquisition Company II, LLC, SRAC Holdings, I, Inc., and Jerry M. Comstock (“Strategic”) have not filed a response.

The request is deemed to be the motion. Rule 7-3(c) states, “[a]ny evidentiary and procedural objections to the opposition must be contained within the reply brief or memorandum.” Counter-defendants and Strategic each filed reply briefs in support of their respective motions for summary judgment (Dkt. Nos. 350 and 367). Likewise, they each filed

1 objections to evidence submitted by BKC in opposition to their respective motions for summary
2 judgment (Dkt. Nos. 350-1 and 361).

3 Evidentiary objections “must be contained within the reply brief or memorandum,” not
4 filed as a separate submission, or even contained in an attachment to the reply, as is the case with
5 Strategic’s evidentiary objection. Thus, the submissions at docket numbers 350-1 and 361 are
6 hereby **STRICKEN**. As is required, the Court will independently consider the admissibility of any
7 evidence relied on in ruling on the motions for summary judgment.

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9 **IT IS SO ORDERED.**



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11 Dated: December 5, 2011.

12 WILLIAM ALSUP
13 UNITED STATES DISTRICT JUDGE